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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,932	02/12/2004	Joe W. Anderson	60747.US/C-6176.0	5486
408	7590	12/30/2005		
LUEDEKA, NEELY & GRAHAM, P.C. P O BOX 1871 KNOXVILLE, TN 37901			EXAMINER STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/777,932	Applicant(s) ANDERSON ET AL.	
	Examiner Gregory J. Strimbu	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 13-15 and 17 is/are rejected.
- 7) ☐ Claim(s) 10, 12, 16 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/26/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Drawings

The drawing correction filed September 26, 2005 have been approved.

The drawings, however, are still objected to because the drawings include superfluous lettering. For example, see "UNSECURED AREA" in figure 3. Additionally, figure 4a is objected to because it comprises two figures rather than one as labeled in the drawings and described in the description of the drawings. Therefore, it is suggested that the applicant amend the specification and drawings to include two figures such as figures 4a and 4b. Finally, figure 2 is objected to because it does not show the elements 0 and 4 and because it does not include lead lines for reference characters 1 and 6.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because pages 7-8 are not currently in the case.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “on a protected side of the barrier” on lines 9-10 of claim 1 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a barrier reinforcement or the combination of a barrier reinforcement and a barrier. The preamble of claim 1 implies the former while the positive recitation of the barrier on lines 9-10 of claim 1 implies the latter. Recitations such as “the upright member” on line 2 of claim 3 render the claims indefinite because it is unclear to which one of the two upright members set forth above the applicant is referring. Recitations such as “a side to be impacted by the stopping assembly” on line 3 of claim 4 render

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the claims indefinite because it is unclear what the applicant is attempting to set forth.

What element of the invention includes the side to which the applicant is referring.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al. '629 in view of Dickinson. Fischer et al. '629 discloses a barrier reinforcement comprising at least one stopping assembly (not numbered, but shown in figure 6) attachable to a barrier 60 to be reinforced, the stopping assembly comprising a flexible cable member 64 operatively associated with an elongated structural member 62 (not numbered, but comprising the length of the structural member) for distributing loading and limiting cutting forces on the cable member when tension is applied to the cable member, and at least two anchored and reinforced upright members 10 on a protected side of the barrier, each upright member having at least one passive engagement device 16 to catch the at least one stopping assembly when the barrier is impacted, the cable forms a substantially continuous loop as shown in figure 2, a reinforcing member 46, a centering mechanism 52, horns 44.

Fischer et al. '629 is silent concerning curved end portions.

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However, Dickinson discloses a barrier comprising a structural member 43 having curved end portions since the ends of the structural member have a circular cross section.

It would have been obvious to one of ordinary skill in the art to provide Fischer et al. '629 with a circular cross section, as taught by Dickinson, to more closely match the cable and, accordingly, reduce the size of the structural member.

Claims 8, 13, 14, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al. '629 in view of Foran. Fischer et al. '629 discloses a barrier reinforcement assembly comprising a substantially continuous cable 64 that is attachable to a barrier and 60 that is at least partially enclosed within a sheath 62, and two spaced apart bollards 10, wherein each bollard comprises a static elongate horn 44 extending therefrom for engaging the sheathed cable when the barrier is impacted. Fischer et al. '629 is silent concerning angling the horns 44, a reinforcing member 46. As shown in figure 5, the horns 44 are in a static state.

However, Foran discloses an assembly comprising outwardly splayed horns 16, 11 for engaging a cable (not numbered, but shown in figure 1).

It would have been obvious to one of ordinary skill in the art to angle the horns 44 of Fischer et al. '629 outwardly, as taught by Foran, to more securely hold the cable on the horns.

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Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al. '629 in view of Foran as applied to claims 8, 13, 14, 15 and 17 above, and further in view of Dickinson. Dickinson discloses a barrier comprising a structural member 43 having curved end portions since the ends of the structural member have a circular cross section and a cable C comprising a substantially continuous loop.

It would have been obvious to one of ordinary skill in the art to provide the structural member and cable of Fischer et al. '629 with a circular cross section and a substantially continuous loop, respectively, as taught by Dickinson, to more closely match the cable and, accordingly, reduce the size of the structural member and to increase the strength of the cable, respectively.

Allowable Subject Matter

Claims 6, 10, 12, 16 and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach the horns extending from the upright member at an angle or about 15 degrees downward from a horizontal plane and the horns are splayed outward with respect to each other at an angle about 15 degrees from a vertical plane perpendicular to the barrier. See lines 1-4 of claims 6, 12 and 16.

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Additionally, the prior art of record fails to teach the end portions of the sheath being substantially hook shaped. See lines 1-2 of claims 10 and 18.

Response to Arguments

Applicant's arguments filed September 26, 2005 have been fully considered but they are moot in view of the new grounds of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. The applicant at least amended claim to include the new limitation of the structural member having curved end portions on line 5 of claim 1. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Gregory J. Strimbu', with a long horizontal flourish extending to the right.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
December 27, 2005